

## CHAPTER 24:05:31

### PRIVATE SCHOOL PLACEMENT

#### Section

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**24:05:31:01. Applicability.** The provisions of this chapter ~~only~~ apply to eligible children who are or have been placed in or referred to a private school or facility by a school district as a means of providing special education or special education and related services and to eligible children placed in private schools by their parents when FAPE is at issue.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:31:02. Responsibility of ~~division~~ department.** The ~~division is responsible for ensuring~~ department shall ensure that an eligible child who is placed in or referred to a private school or facility by a school district is provided special education or special education and related services in conformance with an individual educational program which meets the requirements of this article at no cost to the parents and is provided an education which meets the standards that apply to state and local school districts, including the requirements in this chapter, with the exception of requiring highly qualified special education teachers. The eligible child has all of the rights of a child with a disability served by a school district.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:31:03. Implementation by ~~division~~ department.** The ~~division~~ department shall do the following to implement this chapter:

(1) Monitor compliance with this chapter through procedures such as written reports, on-site visits, and parent questionnaires;

(2) Disseminate copies of this chapter to each private school and facility to which a public agency has referred or placed an eligible child; and

(3) Provide an opportunity for those private schools and facilities to participate in the development and revision of state standards which apply to them.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:31:04. Placement of children by parents.** If an eligible child has available a free appropriate public education and the parents choose to place the child in a private school or facility, the public agency is not required by this chapter to pay for the child's education, including special education and related services, at the private school or facility. However, the public agency must include the child in the population whose needs are addressed consistent with chapter 24:05:32.

Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child and the question of financial responsibility are subject to the due process procedures.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**Cross-Reference:** Procedural safeguards, ch 24:05:30.

**24:05:31:05. Reimbursement for private school placement.** If the parents of an eligible child, who previously received special education and related services under the authority of a school district, enroll the child in a private preschool, elementary, or secondary school without the consent of or referral by the school district, a court or a hearing officer may require the school district to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the school district has not made a free appropriate public education available to the child in a timely manner before that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the state standards that apply to education provided by the state and districts.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:31:06. Limitation on reimbursement.** The cost of reimbursement described in § 24:05:31:05 may be reduced or denied if:

(1) At the most recent individualized education program team meeting that the parents attended before removal of the child from the public school:

(a) The parents did not inform the individualized education program team that they were rejecting the placement proposed by the school district to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(b) At least ten business days, including any holidays that occur on a business day, before the removal of the child from the public school, the parents did not give written notice to the school district of the information described in subsection (a) ~~above~~;

(2) Before the parents' removal of the child from the public school, the school district informed the parents, through the notice requirements described in chapter 24:05:30, of its intent to evaluate the child, including a statement of the purpose of the evaluation that was appropriate and reasonable, but the parents did not make the child available for the evaluation; or

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:31:07. Exceptions to limitation on reimbursement.** Notwithstanding the notice requirements in § 24:05:31:06, the cost of reimbursement may not be reduced or denied for failure to provide notice if:

- (1) ~~The parent is illiterate and cannot write in English;~~
- (2) Compliance with § 24:05:31:06 would likely result in physical ~~or serious~~ emotional harm to the child;
- (3) (2) The school prevented the parent from providing the notice; or
- (4) (3) The parents had not received notice, pursuant to chapter 24:05:30, of the notice requirement in § 24:05:31:06.

In addition, the cost of reimbursement, may, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if the parents are not literate or cannot write in English or if compliance with this section would likely result in serious emotional harm to the child.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.